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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 279

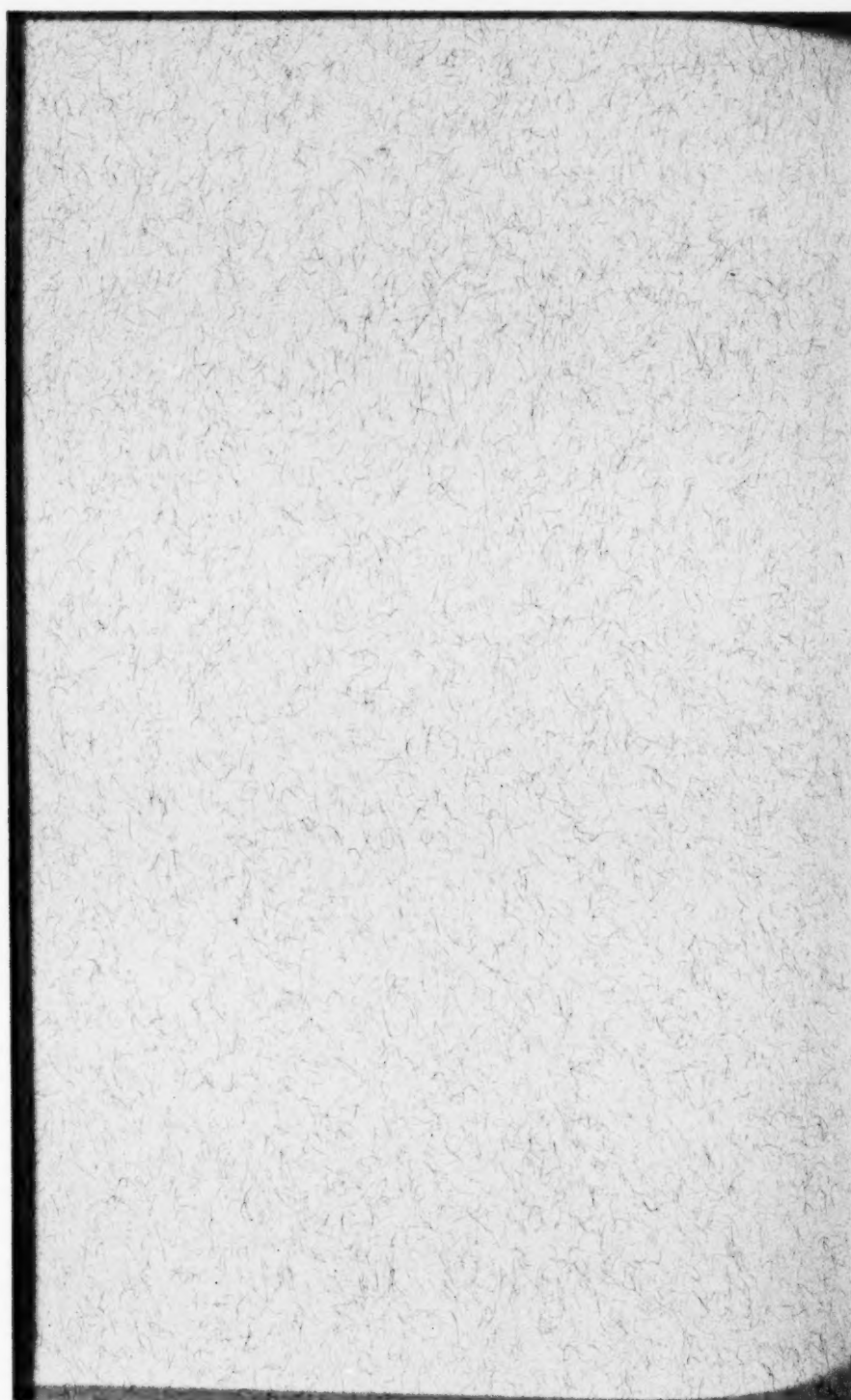
**MARGARET WITHROW, TRADING AS ROYAL BLUE CAB
COMPANY AND GEORGE A. BUTTS,**
Petitioners,

vs.

**WILMA FARMER EDWARDS, ADMINISTRATRIX OF THE
ESTATE OF WILLIAM ALEXANDER EDWARDS, DECEASED.**

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF THE STATE
OF VIRGINIA AND BRIEF IN SUPPORT THEREOF.**

JOHN S. RIXEY,
Counsel for Petitioners.



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MARGARET WITHROW, TRADING AS ROYAL BLUE CAB
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vs. *Petitioners,*

WILMA FARMER EDWARDS, ADMINISTRATRIX OF THE
ESTATE OF WILLIAM ALEXANDER EDWARDS, DECEASED.

PETITION FOR WRIT OF CERTIORARI.

To The Honorable Supreme Court of the United States:

The petitioners, Margaret Withrow, trading as Royal Blue Cab Company, and George A. Butts respectfully represent unto the Court that they are aggrieved by the final decision of the merits of this cause by the Supreme Court of Appeals of Virginia, the highest court of the State of Virginia in which a decision could be had, rendered against your petitioners on the 15th day of June, 1943, in an action at law, wherein Wilma Farmer Edwards, Administratrix of the Estate of William Alexander Edwards, deceased, was plaintiff in the trial Court (defendant-in-error in the appellate court), and your petitioners, Margaret Withrow

and George A. Butts were defendants in the trial court (plaintiffs-in-error in the appellate court). The parties will be referred to according to the relative positions occupied by them in the trial court.

The petitioners respectfully present herewith as a part of this petition, a certified transcript of the record in The Supreme Court of Appeals of Virginia, and a brief in support of this petition which deals more fully with the questions involved herein.

Summary or Short Statement of the Matter Involved.

The matter involved in this case is the question whether Section 5270 Code of Virginia 1936, upon the removal of the domicile of the child, Betty Jean Edwards and her parents to Virginia, legitimated the said child, who had been born in South Carolina of parents domiciled in South Carolina at the time of the birth, and who under the law of South Carolina bore the status of an illegitimate child.

Statement Particularly Disclosing the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review.

Jurisdiction of The Supreme Court of The United States is provided for in U. S. C. A. Title 28 Section 344 (b):

“It shall be competent for the Supreme Court by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, * * * of the United States; * * *.”

The statute of the State of Virginia, the validity of which is brought in question, as applied to the facts of this case, is Section 5270 Code of Virginia of 1936, quoted in full:

“Section 5270. Issue legitimate, though marriage null. The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate.”

The provision of the Constitution of The United States, to which the Virginia statute, *as applied to the facts of this case* is repugnant, is the full faith and credit clause, Article IV Section 1:

“Section 1. Full faith and credit clause.—Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. * * *.”

FACTS OF THE CASE SHOWING THAT THE APPLICATION OF THE ABOVE QUOTED VIRGINIA STATUTE IS REPUGNANT TO THE FULL FAITH AND CREDIT CLAUSE OF THE CONSTITUTION.

This action was brought under the Virginia death by wrongful act statute (Code of Virginia of 1936, Section 5786-5788) to recover damages for the death of William Alexander Edwards. Section 5887 of that statute contains the following provision:

“The jury in any such action may award such damages as to it may seem fair and just, not exceeding ten thousand dollars, and may direct in what proportion they shall be distributed to the surviving widow or husband and *children* and grandchildren of the deceased, or if there be none such, then to the parents, brothers and sisters of the deceased. Nothing shall be apportioned to the deferred class until the preferred class has been exhausted, but between members of the same class the jury shall have absolute discretion as to who shall receive the whole or any part of the recovery.”

In 1933 the said William Alexander Edwards was married to one Marie Carter in South Carolina. Neither of the parties ever obtained a divorce, and there was no dissolution of the aforesaid Edwards-Carter marriage, and Marie Carter Edwards is still living. In 1937 said William Alexander Edwards and one Wilma Farmer went through a marriage ceremony in South Carolina. The child Betty Jean Edwards was born in South Carolina in 1938 of that Edwards-Farmer void marriage. At the time of all the above occurrences all the contracting parties were domiciled in South Carolina. In August 1941, Mr. Edwards, Wilma Farmer and the child moved to Virginia, where Mr. Edwards was killed in an automobile accident in December 1941. Hence it will be noted that the child was born in South Carolina of parents who were not lawfully married to each other, and who were then domiciled in South Carolina.

STATEMENT OF PROCEEDINGS IN THE VIRGINIA COURTS.

Under the death by wrongful act statute of Virginia (Code of Virginia 1936 Sections 5786-5788) this action was brought in the name of the personal representative of the decedent to recover damage for death of the decedent. The statute provides that the beneficiaries of such a recovery shall be "the surviving widow or husband and *children* and grandchildren of the deceased", in such proportions as the jury may award. The trial court over the exceptions of the defendants instructed the jury that the child Betty Jean Edwards was a legitimate child of the decedent, William Alexander Edwards; and the jury awarded the full amount of the recovery of \$10,000.00 to said child.

The defendants moved in arrest of judgment, assigning as error the action of the court in ruling that the said child was legitimate. The trial court overruled the motion, and rendered final judgment for the plaintiff on the verdict, directing that the full amount of the judgment be paid to the

said child as the legitimate child of William Alexander Edwards.

The defendants obtained a writ-of-error from the Supreme Court of Appeals of Virginia. By the original judgment of the appellate court the judgment of the trial court was affirmed in all particulars. Thereupon the defendants applied for a rehearing, which was granted. It developed at the rehearing that there was a second child in South Carolina who claimed also to be a legitimate child of the said William Alexander Edwards. Consequently on the rehearing the appellate court set aside so much of the judgment of the trial court as directed that the full amount of the judgment should be paid to the child Betty Jean Edwards, and so much of its own judgment as was in affirmance thereof, and sent the case back to the trial court to determine who if anyone should share with Betty Jean Edwards in the recovery, holding firm the decision of the trial court and its own original decision that the child Betty Jean Edwards was a legitimate child of the said William Alexander Edwards, and as such entitled to share in the recovery.

The date of the final judgment of the Supreme Court of Appeals of Virginia on rehearing, sought to be reviewed is June 15, 1943, (R. 121). This petition is presented within three months of the last mentioned date, in accordance with the U. S. C. A. Title 28—Section 350.

Question Presented.

The question presented is whether section 5270 Code of Virginia 1936 legitimated the child Betty Jean Edwards as a legitimate child of William Alexander Edwards.

The law is well settled that the status of legitimacy or illegitimacy is a status of a permanent nature, and is fixed at the time of the birth of the child by the law of the place of domicile of its parents at the time of the birth of the child. That place is South Carolina. Hence it was the

law of South Carolina that fixed the permanent status of the child. There is no dispute of the truth of the assertion that the law of South Carolina fixed the status of the child as an illegitimate. Hence when the child came to Virginia she bore the status of an illegitimate or bastard.

It is our contention that the legitimating statute of Virginia (Code of Virginia 1936, section 5270) can have no application to the child for the reason that the statute does not purport to change a status already fixed, but simply purports to fix or establish a status at birth, and nothing more. If we take the clear unambiguous language of the Virginia statute—"The issue of marriages deemed null in law—shall—be legitimate," we see that it purports to establish the status of legitimacy, and find that the sole requisite for the establishment of that status is that the child be an issue of a marriage deemed null in law; and that requisite is determined at *birth*. Hence if the statute is to be applicable to the child in this case such application was at birth. But the child was born in South Carolina of parents then domiciled in South Carolina. It is our contention that the Virginia statute could have no extra-territorial effect reaching out into South Carolina to establish at birth the status of a child born in South Carolina of parents then domiciled in South Carolina.

To hold that the Virginia statute is applicable to the child and establishes her status as a legitimate, is to refuse to give full faith and credit to the act of the birth of the child in South Carolina of parents then domiciled in South Carolina and to refuse to recognize the act of the State of South Carolina in establishing the status of the child as an illegitimate in accordance with the laws of South Carolina. That is what the Supreme Court of Appeals of Virginia has done in holding that the Virginia statute is applicable to the child.

The Reasons Relied On for the Allowance of the Writ.

It will be noted that the opinion of the Virginia court concedes that the child was illegitimate in South Carolina. The only act relied upon for the application of the Virginia statute for the change of that status is the change of domicile to Virginia for a period of four months. The law is well settled that the status of illegitimacy is a status of a permanent nature, and when once attaching it follows the individual into whatever jurisdiction she may go, and is not liable to fluctuation or change with time, place or circumstance. The converse of that proposition is equally well settled, namely that the status of legitimacy is also of a permanent nature, and when once attaching, has the like effect. The only method by which the status of illegitimacy can be changed to legitimacy is where some act or circumstance occurs, which according to the law of the state of the domicile of the parties at the time of the happening of the act or circumstance is sufficient to legitimate. The authorities are also agreed that when once legitimated by the proper law, the individual is forever and everywhere legitimate, into whatever jurisdiction she may wander.

Hence since this child has been declared legitimated by the Virginia court, if she returns to South Carolina tomorrow, she is legitimate in South Carolina, and the courts of South Carolina will be required to so recognize under the full faith and credit clause of the Constitution. Therefore the effect of the decision in the instant case is that every illegitimate in South Carolina born of a void marriage, by the simple expedient of moving his domicile to Virginia for however short a period, and with nothing more, may thereafter return to South Carolina, bearing the status of a legitimate, which the courts of South Carolina should recognize under the true principles of Conflict of Laws and the full faith and credit clause of The Constitution. Or

if they refuse so to recognize, there will be the intolerable situation of a person being legitimate in one state and illegitimate in another state.

South Carolina has no divorce laws. But that does not prevent married people from separating. It is not unusual practice for a married person who has separated from his or her spouse to obtain another marriage license to marry another person, without any questions asked, and the ceremony performed and the parties live together. The result is that the state contains a great many children and adults who are illegitimate, and so recognized by the law. South Carolina has no legitimating statute. Whether wise or unwise, such is the policy of the State of South Carolina, and has been from the foundation of the State.

The question involved in this petition is a question of Conflict of Laws, involving the conflicting public policies of two different states, or rather two different groups of States, which is of far-reaching and great importance to such States, and especially in States such as South Carolina, whose studied and consistent policy has been to refuse to recognize as legitimate a person who was born out of lawful wedlock. The specific question here involved has never been decided by this Court. It is submitted that the Virginia Court has decided the question in a way contrary to the principles laid down by this Court.

Williams vs. North Carolina, — U. S. —, 63 S. Ct. 207, 87 L. Ed. 189.

Prayer for Writ of Certiorari.

The petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to The Supreme Court of Appeals of Virginia, and The Circuit Court of Warwick County, Virginia, commanding said Courts to certify and send to this Court on a day certain to be therein designated a full and complete tran-

script of the record and all proceedings of said courts in this case, to the end that said case may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the said judgment of the said Supreme Court of Appeals of Virginia may be reversed by this Honorable Court.

MARGARET WITHROW, Trading as
Royal Blue Cab Company, and
GEORGE A. BUTTS,

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